

ORIGINAL

BEFORE THE
Federal Communications Commission

WASHINGTON, D.C.

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NOV 23 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b)) MM Docket No. 98-179
Table of Allotments) RM-9334
FM Broadcast Station)
(Oraibi and Leupp, Arizona))

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

COMMENTS IN SUPPORT OF NOTICE OF PROPOSED RULEMAKING

Oraibi Media Association ("OMA"), permittee of FM radio broadcast station KBDT, Oraibi, Arizona ("KBDT"), and by its attorneys, hereby comments on the Commission's Notice of Proposed Rule Making ("NPRM") to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, to reallocate Channel 255C from Oraibi, Arizona to Leupp, Arizona.

PRELIMINARY STATEMENT

OMA filed a Petition for Rule Making on June 22, 1998 ("Petition"), requesting that the Commission amend its FM Table of Allotments to reallocate Channel 255C from Oraibi to Leupp, Arizona as that community's first local service, and to modify KBDT's license accordingly to specify Leupp as its community of license. On October 2, 1998, the Commission released its Notice of Proposed Rulemaking, MM Docket No. 98-179, RM-9334 ("NPRM"), in the above-

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referenced matter, proposing to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Oraibi, Arizona	255C	--
Leupp, Arizona	--	255C

The Commission noted that, while reallocating Channel 255C to Leupp would provide that community with its first local transmission service, it would not deprive Oraibi of an existing service. Because KBDT(FM) is not yet constructed, the public has not become reliant upon its service, and therefore relocation does not constitute a loss of aural service to the community. See NPRM at ¶ 5; Hague, New York, MM Docket No. 98-52, RM-9239 (released April 17, 1998). In addition, because OMA proposed no transmitter site relocation, the Commission determined KBDT could be reallocated to Leupp in full compliance with the Commission's distance separation and technical requirements.

In the NPRM, however, the Commission noted that if Channel 255C were allotted to Leupp from the currently proposed transmitter site location, KBDT will provide a 70 dBu over portions of the Flagstaff, Arizona Urbanized Area. As a result, the Commission requested "additional information responsive to a Tuck analysis to determine whether Leupp is sufficiently independent of Flagstaff to merit a first local service preference or whether it should be credited with all of the authorized services in the Flagstaff urbanized area." NPRM at ¶ 4 (citing Huntington Broadcasting Co. v. FCC, 192 F. 2d 33 (D.C. Cir. 1951); RKO General, Inc., 5 FCC Rcd 3222 (1990); Faye and Richard Tuck, 3 FCC Rcd 5374 (1988)).

In addition, because KBDT covers Leupp from its currently authorized Oraibi site, the Commission asked for the additional public interest benefits that would result from reallocating Channel 255C from Oraibi to Leupp.

As shown below, Leupp is an independent community, deserving of a first local service preference. Further, because Leupp is home to a large Navajo population and certain commercial businesses, allotting an FM station to Leupp would serve the public interest by providing it with a broadcast voice that would otherwise be unavailable. This is in contrast to Oraibi, the present community of license, where there is little or no commercial activity. Therefore, the Commission should amend the FM Table of Allotments to allot Channel 255C from Oraibi to Leupp, Arizona, and should modify the license for KBDT(FM) to specify operation on Channel 255C in Leupp.

ARGUMENT

I. OMA Reiterates its Declaration of Intent

As OMA noted in its Petition, if the proposal to reallocate Channel 255C from Oraibi, Arizona to Leupp, Arizona is granted, OMA will promptly file the appropriate application for Channel 255C at Leupp, Arizona and if authorized, will promptly construct the facilities contemplated therein.

II. OMA Satisfies the Factors Under the Commission's Tuck Analysis

When an applicant proposes an allotment to a community for its first local service preference, and that community is located in an Urbanized Area, or the 70 dBu contour of the station covers 50% or more of an Urbanized Area, a presumption of interdependence is created. See Faye and Richard Tuck, 3 FCC Rcd 5374 (1988). The Census Bureau defines an Urbanized Area as consisting of a central community and adjacent densely settled areas that together have a minimum of 50,000 persons. If the presumption of interdependence is not rebutted, the

community is credited with all the local transmission services licensed to communities within the Urbanized Area. Id.

Under Tuck, the Commission looks at the following three factors in determining whether an applicant rebuts a presumption of interdependence, and whether the community deserves a first local service preference, by relying on three factors: (1) signal population coverage; (2) size and proximity of the suburban community relative to the adjacent community; and (3) the interdependence of the suburban community with the central city. See Faye and Richard Tuck, 3 FCC Rcd 5374 (1988). As set forth below, an analysis of the factors in this case will rebut the presumption of interdependence, as the coverage of Flagstaff is incidental to the coverage of a much broader service area.

A. Tuck Factor Number 1: Signal Coverage of KBDT over the Flagstaff Urbanized Area

In the NPRM, the Commission stated that KBDT, operating from the current transmitter site, will have over 90% coverage of the Flagstaff Urbanized Area. Because no transmitter site relocation is being proposed, however, there is no change in the coverage to the Urbanized Area from that currently proposed by the permittee. Therefore, this should not weigh against OMA's petition.

Moreover, as shown on the coverage map submitted with the applicant's Petition for Rulemaking, the coverage of Flagstaff is incidental to the entirety of the coverage provided by the station. As a Class C station, the vast majority of the station's coverage area is well away from Flagstaff, covering much of the northeast corner of the state, and most particularly much of the Navajo Indian Reservation.

The Commission states, in the Notice, that Leupp is "adjacent" to the Flagstaff urbanized area. However, this is a misstatement as, in fact, Leupp is physically separated from the

Urbanized Area by approximately 40 miles of sparsely populated area.^{1/} This is not a situation of Leupp being some sort of immediate suburb of Flagstaff. Instead, given the vast distances between it and Flagstaff, Leupp is an independent community. Thus, the mere fact that the proposed station will cover the urbanized area with a signal does not mean that it is just another Flagstaff station.

B. Tuck Factor Number 2: Size and Proximity of Leupp to Flagstaff

Leupp, with a population of 857, is approximately 45 miles from Flagstaff, with a population of 45,857. However, as set forth above, the distance indicates that Leupp is not just an appendage of the Flagstaff Urbanized Area. Instead, it is separated from Flagstaff by a large, sparsely populated area, which demonstrates that the community is not just part of the Flagstaff metropolitan area.

C. Tuck Factor Number 3: Interdependence Between Oraibi and Flagstaff

The Commission has consistently held that the degree of interdependence between the proposed community and the centralized city in the Urbanized Area is the most important factor in a Tuck analysis. See, e.g., Farmington, California, 11 FCC Rcd 8117 (1996). As shown below, Leupp is deserving of a first local service preference. Leupp is not a mere suburban community for Flagstaff, but instead part of the Navajo Nation, looking to the reservation for a definition of its needs and interests, rather than to Flagstaff. Therefore, the Commission cannot find that the community is not deserving of its own local source of media expression.

^{1/} The Urbanized Area is a geographically compact area about 12 miles by 8 miles in size, centered around the community of Flagstaff. Even in Flagstaff itself, there are areas of low density population not in the Urbanized Area.

The Commission breaks down its interdependence analysis into the following characteristics:

1. The extent to which community residents work in Flagstaff, rather than Leupp

Leupp is home to a number of local businesses at which the employees are primarily Leupp residents. For example, Leupp Schools, Inc., which runs a boarding school with a current enrollment of 380 students, has 120 total employees, of which 100 are Leupp residents. See Letter of Larry West, attached hereto as Exhibit A. Tooh-Dineh Industries, Inc., an electronics component business in Leupp, has 100 employees, 30 of which are from Leupp, while the remaining 70 come from nearby surrounding communities, including Birdspring, Dilcon, Ganado, Joseph City, Tolani Lake, Tuba City, Winslow, and even some employees who commute from Flagstaff. See Declaration of Mark R. Begay, attached hereto as Exhibit B. Finally, the Compressor Station of the El Paso Natural Gas Company, located in Leupp, has 7 employees, 4 of which live in the community. See Declaration of Terry Peters, attached hereto as Exhibit C. As shown, a number of the residents of Leupp work in the community itself, and in adjacent communities, rather than commuting into Flagstaff.

2. Whether the smaller community has its own newspaper or other media that covers the community's local needs and interests;

There is currently no media in Leupp that covers the community's local needs and interests. The primary newspapers relied upon in the community, however, are The Winslow Mail, published in Winslow, Arizona, and the Navajo Times, published in Window Rock, Arizona. Further, as shown in Exhibit A, Exhibit B, and the Declaration of Clara Tsosie, attached hereto as Exhibit D, there is a desire to have a local radio in Leupp so that the people will have use of a

media tool with which to inform the community of items of local interest and of importance to the Navajo culture.

3. Whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area;

As shown in the above-referenced Exhibits, there is a sentiment among business owners and the governing body of Leupp that the community of Leupp is independent of nearby communities with its own economic base. Further, there are numerous yearly events that occur in Leupp to help foster its own unique Navajo identity. For example, every November, there is a community Thanksgiving dinner for all the Leupp residents. In December, Leupp sponsors an Elderly Day, in which a Christmas meal is made by the residents of the Leupp Community for all the Leupp elderly. A Red Ribbon Run for Charity is held each October that begins in Winslow Rock, Arizona and ends in Leupp, Arizona. Finally, in April, a weekly festival is held as part of Child Abuse Month, which is attended by the President of Navajo Nation, in which numerous activities for the children of Leupp are held. See Exhibit C. These activities, and the governance of the community described below, demonstrate that Leupp is part of the Navajo Nation, and not part of the Flagstaff metropolitan area.

4. Whether the specified community has its own local government and elected officials;

Leupp is one of 110 Chapter communities governed by the Navajo Tribal Authority. As a Chapter, Leupp has two District delegates to the Navajo Nation, as well as its own President, Vice President, Secretary, and Community Services Coordinator. In addition to these individuals, there are currently five other employees which work for the Leupp Chapter, and they are all Leupp residents. See Exhibit D. These delegates and officers are elected by the local Leupp residents, and further demonstrate the independence from Flagstaff.

5. Whether the smaller community has its own telephone book provided by the local telephone company or zip code;

Leupp does have its own zip code ("86035 "), and local exchange prefix ("686"). While Leupp does not have its own telephone book, it does have a separate section in the Navajo Communications Company phone book, again demonstrating a connection with the Navajo Nation, not with Flagstaff..

6. Whether the community has its own commercial establishments, health facilities, and transportation systems;

As previously noted in the Petition, Leupp has its own post office, elementary and middle school, charter school, fire department, health center and dental clinic. In addition, there are a number of businesses that are located in the Leupp vicinity. Also, the Navajo Tribal Utility Authority, a division of the Navajo Nation, oversees the water, sewer, electricity and gas departments for Leupp, once again demonstrating its connection, not with Flagstaff, but with the Navajo Nation.

7. The extent to which the specified community and the central city are part of the same advertising market;

Advertisers in Leupp would not target Flagstaff media. Because of its location, advertisers would instead look to Navajo based publications, such as the newspapers referenced above.

8. The extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries.

As shown in Factor 6, Leupp and the Navajo Nation provide for a number of various municipal services directly to the community, and there is no need to rely on the Flagstaff metropolitan area.^{2/}

As shown, a majority, of the above-referenced factors point to Leupp being independent from Flagstaff. Therefore, based on this determination, Leupp is wholly deserving of a first local service preference as it separate from the Flagstaff Urbanized Area.

III. Relocating KBDT to Leupp Would Properly Serve the Public Interest

KBDT would provide a number of benefits to the Leupp community, which is deserving of a first local service. As previously noted, when Channel 255C was originally allotted to Oraibi, it was done as part of an allotment proceeding where 689 channels were allotted at one time. See 50 Fed Reg. 3514 (1995). Oraibi is not recognized by the United States Census, while Leupp is considered a Census Designated Place.

Leupp is the home of a large Navajo population, and there is a desire and need in the community to have a media outlet which can be used to address issues relevant to both the Leupp community and the Navajo Nation as a whole. OMA intends to work with the community to develop programming that addresses important social and political issues. KBDT will also serve as a focal point for the community, informing the public of news, weather, and community events, such as those discussed in Section C, supra. Because of all these public interest benefits KBDT would provide to Leupp if it were so allotted, OMA's Petition should promptly be granted.

^{2/} The elementary and middle school are part of the Flagstaff Unified School District.

CONCLUSION

For the foregoing reasons, Oraibi Media Association respectfully requests that the Commission reallocate Channel 255C from Oraibi, Arizona to Leupp, Arizona and modify the license of radio station KBDT(FM) accordingly.

Respectfully submitted,

ORAIBI MEDIA ASSOCIATION

By: 

David D. Oxenford

Jason S. Roberts

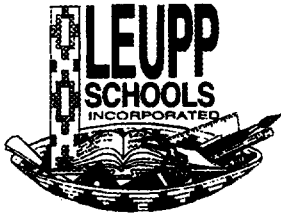
Its Attorneys

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Suite 400
Washington, D.C. 20006
(202) 659-3494

Dated: November 23, 1998

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EXHIBIT A



*LEUPP SCHOOLS, INC.
HC - 61 Box 'D'
Leupp, Arizona 86035
(520) 686-6211/6270
Fax (520) 686-6216*

November 19, 1998

Terry Peters
Oraibi Media Association

Dear Terry:

I am Larry West of Leupp Schools, Inc., a school located in Leupp, Arizona. There are currently 120 full-time employees and 0 part-time employees that work at the school. Of those employees, 100 are residents of Leupp, which represents 90% of the overall workforce. The remaining employees are from Birdspring, Tolani Lake, Winslow, and Flagstaff.

We have no media outlets currently in Leupp. A local radio outlet would greatly benefit the community of Leupp for emergency weather information concerns, as well the positive aspects it could have on the students, schools and the community.

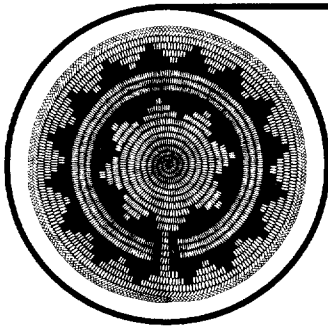
Leupp is an independent community, located 50 miles north east of Flagstaff.

Sincerely,

A handwritten signature in cursive script, appearing to read "Larry West", written in dark ink.

Larry West
Personnel Manager

EXHIBIT B



TOOH DINEH INDUSTRIES, INCORPORATED
HCR-61, BOX E • WINSLOW, ARIZONA 86047
520/686-6477 • FAX 520/686-6516

a subsidiary of Dineh Cooperatives, Incorporated

November 19, 1998

Terry Peters
Oraibi Media Association

Dear Terry:

I am Mary R. Begay of Tooh Dineh Industries, a contract manufacturing firm in Leupp, Arizona. There are currently over 100 full-time employees. Of those employees, thirty are residents of Leupp. This represents 30% of the workforce. The remaining employees are from Birdspring, Dilcon, Flagstaff, Ganado, Joseph City, Tolani Lake, Tuba City, and Winslow.

Leupp does not currently have a local newspaper, radio station or television station. A local radio station would benefit the community of Leupp.

Sincerely,

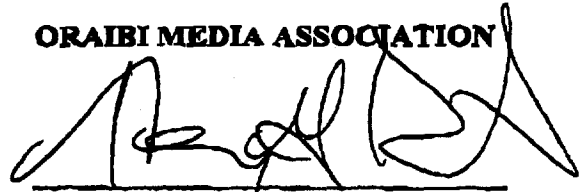
Mary R. Begay
Quality Manager

EXHIBIT C

DECLARATION

I, Terry Peters, Member of Oraibi Media Association, permittee of KBDT(FM), Oraibi, Arizona, hereby declare under penalty of perjury the following:

- 1) On November 19, 1998, I met with Louie Long, Operations Specialist at the El Paso Compressor Station ("Station") of El Paso Natural Gas Company in Leupp, Arizona. Mr. Long noted that the Station has 7 full-time employees, four of which live in Leupp. The remaining employees live in Holbrook and surrounding Holbrook communities. I also spoke with Mr. Long about the possibility of a radio station being located in Leupp, and he noted the community would benefit from a media outlet serving the local community interests.
- 2) On November 19, 1998, I spoke with Clara Tsosie, Clerk for the Leupp Chapter, the local governing body of Leupp working under the Navajo Nation. She told me about a number of the local community events that occur in Leupp. Every November, there is a community Thanksgiving dinner for all the Leupp residents. In December, Leupp sponsors an Elderly Day, in which a Christmas meal is made by the residents of the Leupp Community for all the Leupp elderly. A Red Ribbon Run for Charity is held each October that begins in Winslow Rock, Arizona and ends in Leupp, Arizona. Finally, in April, a weekly festival is held as part of Child Abuse Month, which is attended by the President of Navajo Nation, in which numerous activities for the children of Leupp are held.
- 3) I have reviewed the comments that are a part of this filing hereof and the facts stated therein are true and correct to the best of my knowledge and belief.

ORAIBI MEDIA ASSOCIATION

By: Terry Peters
Member

Dated: November 23, 1998

EXHIBIT D

Leupp Chapter

*C.P.O. Box 5085 Leupp, Arizona 86035
(520) 686-3227/3228 Fax (520) 686-3232*

*Jim Stone, President
Maybelle Gody-Dan, Vice President
Delores Lee, Secretary Treasurer*

*Leonard Chee, Council Delegate
Allan Todecheenie, Grazing Management
Freddie Howard, Counsel Delegate*

November 19, 1998

Terry Peters
Oraibi Media Association

Dear Terry:

Leupp Chapter, a business located in Leupp, Arizona that Navajo Nation Government. There are currently one full time employees and four part time employees that work at Leupp Chapter House. Of those employees, five are residents of Leupp.

Leupp needs a local radio station to communicate with it's residents about upcoming current events, Chapter news. And severe weather announcements. We urge your support in the endeavor.

Sincerely,



Clara Tsosie, Clerk Typist
Leupp Chapter

LEUPP CHAPTER

Personnel List

DISTRICT 5 COUNCIL DELEGATES:

Leonard Chee
Freddie Howard

PRESIDENT:

Jim Store

VICE PRESIDENT:

Maybelle Cody-Dan

SECRETARY/TREASURER:

Delores Lee

GRAZING MANAGEMENT:

Allan Todacheenie

COMMUNITY SERVICES COORDINATOR:

Louise Walker

CLERK TYPIST:

Clara Tsosie

ADDRESS:

Leupp Chapter
CPO Box 5085
Leupp, Arizona 86035

PHONE:

Voice: (520)686-3227/3228
Fax: (520)686-3232

CURRENT CHAPTER ORGANIZATION CHART

